

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :
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 v. : S4 02 Cr. 1144 (BSJ)
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 BERNARD J EBBERS : **MEMORANDUM ORDER**
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 Defendant :
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BARBARA S. JONES
UNITED STATES DISTRICT JUDGE

Change of Venue

Defendant has moved to transfer venue of this case from the Southern District of New York to the Southern District of Mississippi. I have the discretion to transfer this proceeding to Mississippi for the convenience of the parties and the witnesses and in the interests of justice. United States v. Maldonado-Rivera, 922 F.2d 934, 966 (2d Cir. 1990). I have reviewed the submissions of Defendant and the Government, and have considered them in light of the factors set forth by Platt v. Minn. Mining & Mfg. Co., 376 U.S. 240, 243-44 (1964). I have concluded that Defendant has not met his burden of justifying the transfer, and find that this prosecution should remain in this jurisdiction, where it was originally brought. Defendant's motion to transfer venue is therefore denied.

Defendant argues that trial in New York is inconvenient for him because he resides in Mississippi. However, Defendant does

not claim that trial in New York would be unreasonably expensive for him. The inconvenience he faces is no different from that faced by other defendants who are prosecuted outside the states where they live.

Defendant also argues that trial in New York is inconvenient for the majority of both the Government's and his own witnesses. The Government has indicated that some of its witnesses reside in Mississippi, but that many others it anticipates calling do not live in Mississippi, and instead are scattered throughout the country. In any event, the Government would assume the burden of their travel and accommodations costs. On the other hand, Defendant identifies a handful of possible defense witnesses who hail from Mississippi. Defendant states that it would be far less convenient for those witnesses to testify in New York than it would be in their home forum of Mississippi. However, Defendant does not allege or attempt to show that these witnesses would be unable to testify in New York, that he would be unable to call them, or that he would be financially incapable of paying such witnesses' expenses. I would only add that in this age of easy air travel, this factor is generally much less relevant than it was in 1964, when the Supreme Court decided Platt.

The next Platt factor is the location of events. Defendant concedes that New York has legally sufficient venue in this

case. He argues that the majority of events, however, took place in Mississippi, requiring a transfer of venue there. But as the Government's submission makes clear, the focus of this case will be on both the accounting entries, which arguably took place in Mississippi, as well as the conversations Defendant had with securities analysts in New York. Furthermore, WorldCom was a national company. It was incorporated in Georgia and was headquartered in Mississippi. Its stock was listed on the NASDAQ, a national market system. Many of its largest shareholders had offices in New York. As I said in the Sullivan proceeding, the planning, execution and impact of the relevant events in this case were not limited by geography.

Defendant argues that the location of the relevant documents is a neutral factor because although the documents are here in New York, they can be transported back to Mississippi. This concession ignores the fact that there are over 200 boxes of documents that have been catalogued and warehoused by the Government at 26 Federal Plaza. A transfer of venue would require the Government to remove these documents and transport them to Mississippi, imposing a substantial burden at an enormous cost. I therefore find that this factor is not neutral, but rather weighs against a transfer of venue.

Defendant argues that the expense to him of defending himself in New York weighs in favor of a transfer. But

Defendant does not claim that he cannot pay his defense costs and other expenses for trial in New York. Furthermore, moving this trial to Mississippi would impose an enormous cost on the Government.

Defendant argues that the remaining factors - the disruption of the defendant's business, the location of counsel, the relative accessibility of the place of trial, the docket conditions of each potential district and any other special circumstances - are neutral. The Government argues that each of these factors weighs against a transfer of venue. Because I find that the other Platt factors indicate that a transfer of venue is inappropriate, it is not necessary for me to analyze each of these factors individually.

Finally, although it is outside the scope of the Platt factors, there is a reason that a criminal case, as a general rule, should remain in the district where it was first filed. It is the government who bears the burden of proof, and in putting on its case in chief, it is the government that must organize and present the majority of the evidence and witnesses at trial. It would impose an enormous burden on the government to move the prosecutors, investigators, support staff, court staff and others familiar with the case, along with the evidence and voluminous documents, to another jurisdiction. Accordingly, Defendant's motion to transfer venue is denied.

SO ORDERED:

BARBARA S. JONES
UNITED STATES DISTRICT JUDGE

Dated: New York, New York
 October 18, 2004